

Application No. 10/073,447
Response to Office Action Dated July 8, 2003
In Reply to USPTO Office Action dated April 8, 2003
Attorney Docket No. 3139-011903

REMARKS

Claim 1 stands rejected under 35 U.S.C. § 102(a) because the Examiner asserts that the claimed variety was either known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the Applicant. The variety of the subject application was not known or used by others in the United States before the filing date of the subject application. 'Evangeline' has never been commercialized by another, nor available for public use in any other country by another. Per the specification, 'Evangeline' was discovered by the inventor in 1993, well before the publication date of the references cited by the Examiner. Thus, 'Evangeline' has not been patented or described in a printed publication in the United States or in a foreign country by another, before the date of the invention by the Applicant. Therefore, a rejection under 35 U.S.C. § 102(a) is wholly inappropriate.

Claim 1 also stands rejected under 35 U.S.C. § 102(b) for asserted anticipation by Canadian Plant Breeder's Right grant number 0617, granted in Canada on May 3, 1999. This reference is non-enabling and does not indicate public use or sale of 'Evangeline' in the United States more than one year before the filing of the instant application, so a rejection under 35 U.S.C. § 102(b) is inappropriate.

'Evangeline' was first commercialized in Canada in 1999. It first became publicly available after May 3, 1999, only in Canada. This is the only public availability of 'Evangeline' anywhere in the world. 'Evangeline' has never been commercialized, nor available for public use in any other country, including the United States. Therefore, because the new variety was never disclosed in an enabling publication, nor was it in public use or for

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sale in this country, the rejection under 35 U.S.C. § 102(b) is wholly inappropriate.

Withdrawal of the rejection under 35 U.S.C. § 102(b) is respectfully requested.

In light of the foregoing, allowance of the claim is respectfully requested.

Respectfully submitted,

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